

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 5671 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may
be allowed to see the judgment ?

2 To be referred to the Reporter or not
?

3 Whether their Lordships wish to see
the fair copy of the judgment ?

Whether this case involves a
substantial question of law as to the
4 interpretation of the constitution of
India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the
civil judge ?

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VASANTLAL HARILAL SHAH - Petitioner(s)

Versus

DIRECTOR & 2 - Respondent(s)

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Appearance :

MR DIPAK R DAVE for Petitioner(s) : 1,
MR SIRAJ GORI AGP for Respondent(s) : 1 - 2.
NANAVATI & NANAVATI for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 28/07/2006

ORAL JUDGMENT

1. The petitioner is a retired lecturer having retired from respondent no.3 college. The petitioner retired w.e.f. 15th June, 2004. In the present petition he seeks pensionary benefits from the Government.

2. Short facts leading to the present petition are that the petitioner was appointed as a Demonstrator in July, 1966. Thereafter he performed his duties with various institutions in teaching capacity. Eventually, he retired on superannuation w.e.f. 14/6/2004.

2.1. The Government provided pension scheme for the teaching staff of various aided affiliated private colleges. This was done through resolution dated 15/10/1984. Existing staff members were given option to switch over to pension scheme. Time limit was provided for exercising such option. Since number of employees could not exercise their option within time, the Government on the representation from the staff side extended such time limit from time to time. It is not in dispute that final extension was granted vide resolution dated

17/9/1991. It is the case of the petitioner that in January, 1986 he exercised his option for switching over to the pension scheme. Such option was within the time extended by resolution dated 10/1/1986.

2.2. It is also the case of the petitioner that having opted to switch over to the pension scheme he was no longer covered by the C.P.F. scheme. By virtue of this, the petitioner stopped receiving the employers contribution in his Provident Fund Account. Additionally, employer's contribution to his CPF amount along with accumulated interest was also surrendered to the Government by the college. In fact it is the case of the petitioner that the DEO appropriated such amount since the petitioner had opted for pension scheme.

2.3. Despite these factors when the petitioner retired, the Government refused to cover the petitioner under the pension scheme. The petitioner has, therefore, filed this petition seeking pensionary benefits.

3. The case of the Government as emerging from the affidavit in reply is that the Government has not received the option form of the petitioner though

time for exercising option for switching over to the pension scheme was extended by the Government from time to time and last such extension was granted by the resolution dated 17/9/1991. Thereafter there has been no extension and any employee who within the last extended period failed to exercise the option, cannot be covered by the pension scheme. A resolution passed in the year 2004 is sought to be relied upon for this purpose.

4. On the basis of the above controversies, learned advocates appearing for the parties have made detailed submissions.

5. Having heard the learned advocates, I find that the petitioner has made out a case for being covered under the pension scheme. As an employee his duty was to exercise the option if he so desired. Admittedly, such option was to be given to the concerned college and not directly to the Government. If ultimately for some reason the concerned college fail to forward option form to the Government, the petitioner cannot be blamed or penalized for the same. This however does not mean that regardless of the question whether the petitioner has actually

exercised such option or not, claim for being covered under the pension scheme can be granted.

5.1. In this case however the facts are peculiar and speak for themselves. The petitioner claims to have exercised the option in January, 1986. The college also has supported the case of the petitioner and communication has been placed on record at page 126 of the compilation indicating that the college could not forward the option form of the petitioner to the Government. Had this been the only factor, perhaps this Court would not have accepted the say of the petitioner without further probe. In this case however, there is contemporaneous record of unimpeachable character which would establish that the petitioner had exercised such option. Firstly, the petitioner has stated in affidavit that such option was exercised at the relevant time. The college also supports the case of the petitioner. Government in its reply does come out with a case that upon inquiry it is found that the averments are not correct. This is not all, as a fall out of the petitioner exercising option for pension, he was covered under the GPF scheme at the relevant time itself. Simultaneously his CPF coverage came to end.

This can be culled out from the fact that the petitioner's Provident Fund Account stopped receiving contribution of the employer right from the year 1986. The employer's contribution to his Provident Fund Account which had accumulated till then along with interest was also appropriated by the Government at the relevant time. All this will lead to one conclusion namely that so far as the petitioner is concerned he had every right to carry an impression that his option for pension had been duly received by the authorities and also accepted. The petitioner thereafter was not expected to take any further steps to verify whether his college in turn has actually forwarded such form to the Government or not. Even if the college did not do so, it was an issue between the Government and the college concerned. The petitioner had sufficiently discharged his duties and the respondents jointly had by their conduct permitted the petitioner to believe that his option was duly received and acted upon. Long thereafter when the petitioner retired, it would not be open for the respondents to seek to exclude the petitioner from pension scheme. Since the say of the petitioner that he has not received contribution of the employer in his provident fund account after 1986 has not been

disputed by the Government in the affidavit in reply, I find that this assertion of the petitioner is required to be accepted.

6. In the result, the petition is allowed. Respondents are directed to give the benefit of pension scheme to the petitioner as per rules. The pensionary benefits of the petitioner shall be calculated accordingly and released expeditiously. If this is done within a period of two months from the date of receipt of a copy of this order, the respondents shall not have to pay interest on the delayed payment of pension. However, if there is any delay beyond the above period, the entire delayed payment of pension shall carry interest at the rate of 8% p.a. from the day such amounts fell due and payable till actual payment. What steps Government should take against the college for not forwarding option of the petitioner at the relevant time is between the college and the Government.

7. In the result, petition is allowed. Rule is made absolute. No costs.

(Akil Kureshi, J.)

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